RETURN

(86)

To an Order of the House of Commons (*a*) setting forth the various laws of the United Kingdom, and in the various dependencies and colonies of the Empire, with respect to the naturalization of aliens; (*b*) defining the effect of naturalization consummated in Great Britain, or in the various colonies or dependencies, respectively, when the person so naturalized becomes domiciled thereafter, in any other portion of the Empire; (*c*) setting forth any efforts heretofore made by the government of the United Kingdom, or of any colony or dependency, or by any body or association, for the purpose of securing uniformity in the naturalization laws throughout the Empire.

R. W. SCOTT,
Secretary of State.

DOWNING STREET, October 10, 1901.

The Officer Administering the Government of Canada.

SIR,—I have the honour to transmit to you for your information, the report of the departmental committee appointed by the Secretary of State for the Home Department to consider the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to naturalization.

I shall be glad to receive at their early convenience the views of your government on the recommendations of the committee.

J. CHAMBERLAIN.

WARRANT OF APPOINTMENT.

I hereby nominate and appoint—

Sir KENELM EDWARD DIGBY, K.C.B., Permanent Under Secretary of State, Home Department (Chairman);

The Honourable FRANCIS HYDE VILLIERS, C.B., Assistant Under Secretary of State, Foreign Office;

Sir DENNIS FITZPATRICK, K.C.S.I., a member of the Council of the Secretary of State for India;

WILLIAM EDWARD DAVIDSON, Esquire, C.B., Q.C., Legal Adviser to the Foreign Office; and

HUGH BERTRAM COX, Esquire, Legal Assistant Under Secretary of State, Colonial Office;

to be a committee to report to me upon the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to naturalization, and to advise whether legislation for the amending of those Acts is desirable, and, if so, what scope and direction such legislation should take.

I further appoint WILLIAM WHEELER, Esquire, of the Home Office, to be secretary to the said Committee.

M. W. RIDLEY,
One of Her Majesty's Principal Secretaries of State.

WHITEHALL, February 9, 1899,

Naturalization Acts Committee of Inquiry.

REPORT.

JULY 24, 1901.

To the Right Hon. CHARLES THOMSON RITCHIE, M.P., His Majesty's Principal Secretary of State for the Home Department.

SIR,—1. On the 9th February, 1899, your predecessor in office, Secretary Sir Matthew White Ridley, commissioned us to report to him upon the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to naturalization, and to advise whether legislation for the amending of those Acts is desirable, and, if so, what scope and direction such legislation should take. We have now the honour to report to you the result of our inquiry.

In dealing with the subject referred to us, we have had to consider two distinct questions, how far the existing law requires elucidation, and in what respects and to what extent it requires amendment and extension. On the first point—the doubts as to the interpretation of the present law—we have been at a certain disadvantage, inasmuch as the subject of nationality, though of great importance, is one which, as it happens, is rarely brought before the courts, and consequently there is but little assistance to be obtained from judicial decisions. Questions, however, frequently arise in one form or another in the administration of the affairs—Domestic, Foreign, Colonial, or Indian—of the executive government. We have had before us the records of the various matters relating to the subject which, during the last 30 years and more, have been considered by one or other of the following public departments, viz.: the Home, Foreign, Colonial, War, and India Offices; and the Admiralty, Board of Trade, and the Civil Service Commission. We have also had the advantage of the able assistance of Sir T. Godfrey Carey (Bailiff of Guernsey), Mr. W. H. Venables Vernon (Bailiff of Jersey), and Mr. George A. Ring (Attorney General of the Isle of Man), on the questions specially affecting their respective provinces, and Professor Westlake, K.C., and Professor A. V. Dicey, K.C., have been good enough to give us their valuable counsel on certain points on which we thought it desirable to consult them. Further, we have had before us the various laws in force in the different parts of His Majesty's dominions regulating the conditions requisite for conferring upon aliens the rights of British subjects within the limits of the territories governed by such laws; also the report of the Select Committee which considered the subject in 1843, and the report of the Royal Commission which dealt with it in 1869, both of which reports, together with their appendices, contain much material which is still of practical importance.

2. The law relating to naturalization is concerned mainly with the conditions under which the rights, privileges, and duties constituting the status of a British subject are acquired and lost. Persons are either invested with that status at the moment of birth, or subsequently acquire it under the operation of statute law. The rights and privileges which constitute the status of a British subject are mainly the political rights and the capacities for the acquistion and holding of property mentioned later in this report; and, what are perhaps of still greater practical importance, those personal rights and privileges which a British subject carries with him into foreign countries. The principal of these are (1) the privilege of protection, subject to any paramount obligation which he may be under to any other state of which he is also a subject or citizen; (2) the right and liability to become a party to proceedings in British consular courts established under the Foreign Jurisdiction Act, 1890 (53 and 54 Vic., c. 37); (3) the right to be married in foreign countries under the provisions of the Foreign Marriage Act, 1892 (55 and 56 Vic., c. 23). On the other hand, there are special liabilities imposed on British subjects for acts committed in foreign countries. A British subject

is amenable to British courts for treason (35 Hen. VIII., c. 2), for murder or manslaughter committed in a foreign country (24 and 25 Vic., c. 100, s. 9), and for bigamy (24 and 25 Vic., c. 100, s. 5). The law is the same with regard to certain offences unde the Merchant Shipping Act, 1894 (57 and 58 Vic., c. 60), and the Explosive Substances Act (46 and 47 Vic., c. 3, s. 3). In some parts of His Majesty's dominions, especially in British India, the liability of a British subject for offences committed outside the limits of the possession is much more extensive. There are also contained in most treaties of extradition special provisions affecting the surrender of the subjects of the country from which the surrender is demanded.

3. Upon naturalization an alien becomes, speaking generally, invested with all the rights and capacities, and subject to all the obligations and liabilities of a British subject. Some differences, however, still exist between the status of a naturalized and a natural-born subject, the more important of which will be noticed in the course of this report. We think that as far as possible these differences should be abolished.

4. The above brief indication of the rights and privileges acquired by, and the duties and obligations imposed upon, an alien by his naturalization as a British subject is enough to show the expediency of avoiding, as far as possible, the occurrence of cases of double nationality, or, in other words, of endeavouring as far as possible to bring about that a person who acquires British nationality shall thereupon cease to be the subject of the country to which he previously belonged. Our law makes provision for the case of a British subject becoming a subject of a foreign state by his own act. This will be dealt with later in this report. But it is obviously impossible for our law to provide that a person on becoming a British subject shall cease to be the subject of any foreign state. Whether or not naturalization as a British subject is attended with this result must depend upon the law of the country of which the naturalized person was a subject immediately prior to his naturalization.

The occurrence of cases of double nationality acquired at birth is due mainly to the fundamental difference which exists between those countries whose law is derived mainly from feudal principles, and those countries whose law comes more directly from Roman sources, the former regarding the place of birth as the determining factor in constituting the relation of sovereign and subject, while the latter look to the nationality of the parent, and disregard (more or less) the place of birth. Although the statute law of most countries has introduced certain modifications of each of these principles, the difference springing from the original sources of the system of law still remains. To guard effectively against the occurrence of cases of double nationality would require the assimilation in this respect of all the various systems of law prevailing in civilized communities, an ideal which, however desirable, is not likely to be realized.

It has been strongly urged* that, in order to bring the law of this country into harmony with that of most other European nations, the legislature should abandon the principle that the mere fact of birth within the dominions confers British nationality. With regard to naturalization, something might be done by conventions with other countries to facilitate the abandonment of a claim to retain as subjects persons who became naturalized in the other contracting state. An attempt to pave the way for conventions with other nations was made in the Naturalization Act, 1870. No effective steps, however, have hitherto been taken in this direction. This subject will be referred to later in this report. It has also been suggested that the Secretary of State, in the exercise of his discretion in granting certificates of naturalization, might have regard to the consideration whether or not the applicant would, on becoming a British subject, be divested of his prior nationality. This suggestion is, we think, worthy of attention, though we recognize that there would be serious practical difficulties in giving general effect to it. We do not think there should be any interference by legislation with the absolute discretion of the Secretary of State.

* See Memoranda by Lord Bramwell, Mr. Mountague Bernard, and Sir William Harcourt: Report of Royal Commission of 1869, pp. XI., pp. XV., and Sir A. Cockburn—Nationality, p. 214.

5. Leaving these general considerations, we proceed to state briefly the present state of the law of this country whereby the rights and duties of a British subject are acquired and lost. That law consists partly of common law and partly of statute law. To the common law belongs the fundamental principle that any person who is born within His Majesty's dominions is from the moment of his birth a British subject, whatever may be the nationality of either or both of his parents, and however temporary and casual the circumstances determining the locality of his birth may have been.

6. The common law regarded the status thus acquired as indelible. '*Nemo potest exuere patriam*' was the rule of the common law. The Act of 1870 altered this rule by providing means for terminating in certain cases and under certain conditions the status of a British subject. These provisions will be dealt with later in this report.

This enactment diminishes the force of the objections, above referred to, which have been raised to the principle that birth within the British dominions confers British nationality. The consideration of the expediency of modifying the common law in this respect is hardly within the terms of the reference to us; but if it were we should be disposed to agree with the views of the majority of the Royal Commissioners of 1869, and on the whole should not be prepared to suggest any alteration of the law. Evidence as to the place of birth affords in most cases a simple and easy proof of British nationality, for which it would be difficult to find a satisfactory substitute.

7. The exceptions to the common law rule that British nationality is determined by the place of birth are few, and if carefully examined are not exceptions at all, so far as the principle is concerned. The rule really is that all persons born 'within the ligeance' are subjects of, the Crown. Consequently the child of an alien enemy born in a part of His Majesty's dominions which is at the time in hostile occupation, is not a British subject. Again, the child born within the British dominions of an ambassador or other diplomatic agent accredited to the Crown by a foreign sovereign is not a British subject. The limits of this latter exception have not been exactly ascertained.

8. The acquisition of British nationality as a consequence of conquest or cession of territory lies beyond the scope of this present report.

9. With the exception of the case of the King's son, who seems to be recognized by the common law as a British subject, wherever born, the acquisition of the status of a British subject by parentage rests on statute law. A person whose father or paternal grandfather was born within His Majesty's dominions is deemed a natural-born British subject, although he himself was born abroad. It is to be observed that it is not accurate to say that the son of a natural-born British subject is in every case himself a British subject. The effect of the statutes, of which the above rule is the result, is that either the father or the paternal grandfather must have been actually born within His Majesty's dominions. The statutes referred to are 25 Edward III., stat. 2; 7 Anne, c. 5, s. 3; 4 George II., c. 21, s. 1; 13 George III., c. 21.

10. We suggest, though the question does not fall strictly within the terms of the reference to us, that these provisions should be repealed and the law consolidated. We think the opportunity might be taken to act on the recommendation of the Royal Commission of 1869, and that it would be desirable to limit the transmission of British nationality to the first generation, by enacting that no person born out of the dominions of the Crown should be a British subject unless his father had been born within the dominions of the Crown and was also at the time of the birth of that person a British subject. A recommendation as to the children of a naturalized British subject born out of the dominions will be found later in this report. Some question has arisen whether the law as laid down in the above statutes applies throughout His Majesty's dominions. We think that doubt should be removed, and the law, with the suggested modification, made of universal application.

11. A question of some difficulty arises here which ought not to be passed over altogether without notice. It is this:—

In applying the principle that every person born within the British dominions is invested with British nationality, what is the exact meaning and extent of the expres-

sion 'British dominions'? Is it applicable only to those countries which form part of British territory, or does it include also some or all of the countries wherein His Majesty exercises jurisdiction or authority of a more or less extensive character, such as protectorates or spheres of influence? It seems to us that the principle can apply only to those countries which have become portions of British territory by conquest, cession, or occupation, and that it does not apply to countries which do not form any portion of British territory, however large and extensive may be the powers of administration and jurisdiction possessed by the Crown therein, 'by treaty, capitulation, grant, usage, sufferance, or other lawful means.' (Foreign Jurisdiction Act, 1890, 53 and 54 Vic., c. 37, s. 1.)

12. To the category of persons who are British subjects by reason of their birth having taken place within His Majesty's dominions must be added those who are born on board a British ship. Some doubt exists as to the extent of this rule. There seems to be no doubt that a person is a natural-born British subject who is (*a*) born on board a British ship of war, wherever such ship may be; (*b*) born on board a British merchant vessel on the high seas. The principal questions which have been raised are (1) whether a person born on board a British merchant vessel in a port of a foreign state, or in other foreign waters, is a British subject; (2) whether a person born on board a foreign ship in British territorial waters, or within the body of a county, is a British subject. We think it important that the law in this respect should be declared, and we consider that the simplest rule would be that a person born on a British ship in foreign waters should be a British subject, but that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was at the time of his birth in British waters.

13. We now come to the consideration of the questions which form the main subject of the reference to us, namely, the present state of the law relating to the acquisition, loss, and re-acquisition, of British nationality, and whether any and what amendments in that law should be recommended.

14. Prior to the Act of 1844, 7 and 8 Vic., c. 66, the only means by which an alien could acquire any of the distinctive rights of a British subject were by special Act of Parliament or by letters of denization. The passing of the Act of 1844, and the fuller powers given by the Act of 1870, rendered the recourse to these methods less frequent. Special Acts of parliament, conferring British nationality are, however, still from time to time passed. Instances have occurred in which such Acts have been so imperfectly drafted as to give rise to questions of great difficulty and to cause much disappointment, especially by the absence of provisions for the naturalization of the children of the naturalized person. It must be borne in mind that strong objection in point of principle has been made on more than one occasion in parliament to the passing of special Acts of naturalization. We think that there will probably be even less occasion than there is at present for passing these special Acts, if a simplified and somewhat extended form of naturalization is granted in accordance with our recommendations. We suggest, however, that in order to secure that such special Acts should confer the rights which are contemplated, the standing orders of the Houses of parliament should include provisions for embodying in private Acts of naturalization the main enactments of the general law, either under the Act of 1870 or under the new legislation which we recommend should supersede that statute. In this way the rights and duties of persons naturalized by special Act of parliament and of those dependent on them would be made in all respects identical with those of persons naturalized by the certicate of the Secretary of State.

15. We think there should be no alteration in the law as regards denization. The grant of any of the rights of a British subject by letters of denization is an ancient prerogative of the Crown; and though there is seldom occasion to resort to it at the present day, we think it ought to be preserved at it now is by section 13 of the Naturalization Act, 1870.

16. Naturalization by certificate of the Secretary of State was introduced in 1844 by the Act to amend the laws relating to aliens, 7 and 8 Vic., c. 66. The only condi-

tion imposed by that Act was that the applicant should come to reside in some part of Great Britain or Ireland with intent to settle therein. The applicant was required to present a memorial stating his age, profession, trade, or other occupation, and the duration of his residence in Great Britain or Ireland, and all other grounds on which he sought to obtain any of the rights and capacities of a natural-born British subject. The Act made it the duty of the Secretary of State to inquire into the circumstances of each case, to consider the memorial, and the grant or refusal of the certificate was in his discretion. In 1856 the Secretary of State was advised that it would be lawful to insert in certificates of naturalization a clause to the effect that such certificates were granted upon condition that the grantees should continue to reside permanently in the United Kingdom, and that the certificate should be determinable on the grantee ceasing so to reside. This advice was acted on, but the practice of granting conditional certificates of naturalization was disapproved by the Royal Commissioners of 1869 and ceased upon the repeal of the Act of 1844 by the Act of 1870. The Secretary of State has been advised that a certificate under the latter Act is not revocable on the ground of having been obtained by fraud, and that it is not competent for him to annex any condition, as to residence or otherwise, providing for the avoidance of the certificate for breach of the condition. In a later part of our report we deal with the question whether it is desirable that some provision should be made for the avoidance or determination of a certificate.

17. The main amendments of the law effected by the Act of 1870 were:—

(1) Removal of the restrictions upon the acquisition and holding of real and personal property by aliens in the United Kingdom, except property in British ships.

(2) Requirement, as a condition of a grant of a certificate of naturalization, of residence for five years in the United Kingdom, or of service under the Crown for the same period, and of intention of continuing so to reside or serve after naturalization.

(3) Limitation of the principle that British nationality is indelible (*a*) by permitting a natural-born British subject, who also at his birth became a subject of a foreign state, to divest himself of British nationality; (*b*) by making the loss of British nationality a necessary and immediate consequence of voluntary naturalization in a foreign country.

(4) Detailed provisions as to the effect of naturalization or loss of nationality by the husband or father upon the status of the wife and children.

(5) Provisions for the readmission or renaturalization of a person who had lost his British nationality.

18. In considering the question expressly referred to us, 'the doubts and difficulties which have arisen in connection with the interpretation and administration of the Acts relating to naturalization,' and the desirability of their amendment, it is important to bear in mind the principal reasons which operate to induce aliens to apply for admission to British nationality.

19. The reasons which formerly afforded the chief motive for becoming a British subject was the incapacity of aliens to hold real property and some descriptions of personal property. This incapacity, as already stated, no longer exists except in the case of British ships. The disability was partially removed by the Act of 1844 and entirely, with the above exception, by the Act of 1870.

20. An alien is incapable of being a member of the Privy Council, or of either House of parliament, of holding any municipal office, or of voting at parliamentary or municipal elections, or of enjoying any office or place of trust, either civil or military. A considerable proportion of the applications for naturalization made by persons who intend to continue to reside in this country are made for the purpose of obtaining the removal of these disqualifications.

21. In this connection we maye observe that the provisions of section 3 of the Act of Settlement (12 and 13 Will. III., chapter 2), prohibiting a naturalized alien

from being a member of the Privy Council or of either House of parliament still remain on the statute-book; although, so far as they relate to persons naturalized under the Act of 1870, they are practically superseded by section 7 (3) of that statute. We think that so much of section 3 of the Act of Settlement as is referred to above should be expressly repealed, with regard to all naturalized persons.

22. Speaking generally, commissions in the army or navy are not given to aliens, nor are aliens admitted to civil service examinations. It is frequently the case that a parent desires naturalization or readmission to British nationality, mainly for the purpose of removing the disqualification of the children, who, if they reside with their parent, will at once become naturalized with him.

23. It also often happens that an alien residing in this country desires naturalization for himself or his children in order that he or they may obtain the protection accorded in a foreign country to a British subject. The belief, usually mistaken, that naturalization as a British subject protects a person against compulsory military service in a country to which he still owes allegiance, is frequently a reason for desiring this protection. The right to the benefit and the liability to the obligation of the provisions of the Foreign Jurisdiction Act, 1890, and the Foreign Marriage Act, 1892, has been already referred to.

24. The advantages or supposed advantages of obtaining the status of a British subject in a foreign country occasionally give rise to applications for naturalization which are not *bonâ fide*. It is by no means an uncommon case that a certificate of naturalization is obtained by means of what is, in fact, a fraudulent statement of the intention of the applicant. He has really no intention to reside in the United Kingdom; all he wants is that he himself, or perhaps more commonly his son, who is a minor, may possess a document which will, in the eyes of the authorities of a foreign country, establish his title to be a British subject.

Experience seems to show that cases of this kind are common, and that the embarrassments to which they give rise are formidable enough to make it desirable that provision should be made for the avoidance, when necessary, of certificates which have been granted on a false and fraudulent statement, either as to actual residence or as to intention to reside.

25. With reference to the amendments required in the Act of 1870, it appears that one of the principal defects in that Act arises from the obscurity of the provision contained in section 7 as to the effect, if any, of a certificate of naturalization outside the limits of the United Kingdom. The section provides that:

'An alien to whom a certificate of naturalization is granted shall in the United Kingdom be intitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is intitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.'

26. This enactment is so obscurely worded that it has been construed in different senses by different authorities. On the one hand it has been held that the operation of the section is confined to the United Kingdom and ceases so soon as the naturalized person is outside its borders, and consequently that the statute does not confer upon a naturalized alien the status of a British subject outside the United Kingdom either in a foreign country or in a British colony; other authorities have, however, maintained that the statute confers the status of a British subject everywhere, except when the naturalized person is actually within the country of which at the time of naturalization he was, and of which he still remains a subject.

Amongst other difficulties, this obscurity in the construction of this section has been an obstacle in the way of negotiating the conventions contemplated in section 3 of the Act of 1870, for the purpose of securing that naturalized persons shall be

divested of their former nationality. It is impossible to ask a foreign country to deprive its subjects of their nationality unless this country is in a position to offer in return the status of a British subject, recognized everywhere, both within and without His Majesty's dominions.

27. Whatever may be the true construction of his enactment, there is no great difference in practice between natural-born and naturalized British subjects so far as regards their obligations to any country which may be also intitled to their allegiance. It is frequently the case that a person who is a natural-born British subject—for instance, a person who is born in a foreign country but whose father was born in His Majesty's dominions, is also the subject of the foreign country. But the British government does not regard such a person as entitled to protection against any obligation imposed by the law of the foreign country so long as he remains within the limits of that country. A naturalized person who is also a subject of a foreign state is for all practical purposes exactly in the same position, except that by the terms of the section referred to he is not while in the foreign country of which he remains a subject 'deemed to be a British subject' at all. In the case supposed, neither the natural-born nor the naturalized British subject could be protected against military service while actually in the state which claims his allegiance.

28. In our opinion, all differences between the status of a natural-born British subject and of a naturalized British subject should as far as posible be abolished. It is especially desirable that a naturalized alien should, like a natural-born British subject, remain a British subject everywhere and for all purposes unless and until he divests himself of or loses his nationality in one of the ways provided by law. The law of this country cannot of course operate to confer on or divest a person of any status existing under a foreign law, and ought not to purport to do so. The drafting of the Naturalization Act of 1870 is in some particulars open to criticism on this ground. It follows that the extent and character of the protection, if any, to be afforded a person in any country which, notwithstanding his acquisition of British nationality, still under its laws has a right to his allegiance, should not, and indeed cannot, be regulated by municipal law, but must be regulated by international comity. It is most desirable that cases of double nationality should be reduced within the narrowest limits by the adoption of the principle that naturalization in one country carries with it the loss of prior nationality, but in so far as this principle is not adopted, it will be necessary to continue to act upon the rule which is at present recognized, that when a person has a double allegiance he is under a paramount obligation to that one of the two countries in which he for the time being is.

29. At present naturalization can be obtained in the United Kingdom under the following conditions:—

(*a*) A certain period of residence in the United Kingdom or of service under the Crown prior to naturalization is required.

(*b*) There must be a declaration of intention to reside in the United Kingdom or to serve under the Crown.

(*c*) The granting or withholding of the certificate is in the absolute discretion of the Secretary of State.

30. We think that these conditions should be modified in the following respects:—

We see no reason why, if conditions substantially identical with those which qualify for naturalization in the United Kingdom are fulfilled by aliens residing in any other part of His Majesty's dominions, the government of the possession in which the alien has satisfied these conditions should not have power to grant, or to recommend to the Home government the grant of complete naturalization as a British subject.

31. This result might be attained in different ways. Probably the simplest course would be to enact to the effect that if it appeared to His Majesty in Council that under a law in force in any British possession the conditions to be fulfilled by aliens before admission to the rights, privileges and capacities of British subjects to be en-

joyed within he limits of the possession included conditions which were substantially the same as those required for the grant of certificates of naturalization under the Act of the United Kingdom, it should be lawful for His Majesty by Order in Council to empower the governor of that possession, in his discretion, to grant to any person on whom the aforesaid rights, privileges, and capacities had been conferred under the local law a certificate of naturalization in a prescribed form, and that certificate should confer upon the grantee the same right, privileges, and capacities, and impose upon him the same duties, liabilities, and obligations as those conferred or impossed by, and have the same effect in all respects as, a certificate of naturalization granted by a Secretary of State.

It should also be provided that His Majesty in Council might revoke any such order when it appeared that the law of the British possession had been so altered as not to justify the continuance of the order, but that, unless revoked, the Order in Council should continue in force notwithstanding any amendment or alteration of the law of the possession.

In the case of a possession in regard to which no Order in Council had been made, we think that the governor might have power in his discretion to recommend to the Home government, for a certificate of naturalization, any alien whom he could certify to have satisfied within the possession conditions identical *mutatis mutandis* with those required for naturalization in the United Kingdom, and that the Secretary of State might, in his discretion, grant a certificate upon such recommendation. Certificates granted in accordance with the recommendations of this paragraph would confer all the privileges of British nationality both within and without His Majesty's dominions.

32. From time to time, beginning as early as the 35th year of Charles II., and perhaps earlier, legislatures of British possessions have passed Acts purporting to confer naturalization on aliens under various specified conditions. Such of these Acts as are still in force are set out in the appendix. In so far as these Acts purport to confer upon aliens certain of the rights of natural-born British subjects within the possession no question arises. It has always, for instance, been within the power of the legislature of any possession to confer upon an alien the right to acquire and hold land within the territory affected. But difficult questions have from time to time arisen, and may probably arise in the future, as to the effect of this legislation upon the rights and duties of the presons so naturalized outside the limits of the British possession. For instance, can a person naturalized locally in British India be convicted in England for a murder committed in France? Or has he the right to be married before His Majesty's consul general at Smyrna? These and similar questions, it will be observed, affect the rights and duties of locally naturalized persons. It is another and a different question how far such persons should be recognized as proper subjects for 'good offices' as between the British and foreign governments. This is a matter not of law but of discretion, and need not in our opinion be considered in this report. But we think that the legal position of such persons should be made clear, and we recommend that in substitution for section 16 of the Act of 1870, a provision should be enacted to the effect that nothing in the Act should affect the power of the legislature of any British possession to confer upon any alien to be enjoyed by him within the limits of that possession any of the rights, privileges, or capacities enjoyable therein by persons born within His Majesty's dominions. Taken in connection with the provisions above recommended for creating the full status of a British subject, an enactment to this effect would, we think, leave no room for doubt as to the nature and effect of local naturalization. We think it right to add that although the conferring of the rights and privileges of British subjects within the limits of any possession of the King, but not elsewhere, is usually termed 'Naturalization,' that expression would more properly be limited to the grant of the status of a British subject which is entitled to recognition everywhere, both within and without His Majesty's dominions. Indeed, a case has occurred in which the fact of a person having been ad-

mitted to the status of a British subject under the law of a colony has been held, probably through misunderstanding of the limited character of the rights conferred, to prevent the resumption of his nationality in the country of his origin.

33. If these principles are adopted certificates of naturalization conferring the status of a British subject in all parts of the world would be given on similar conditions: (1) By a Secretary of State in the United Kingdom; (2) by the governor of a British possession under the power above recommended. The legislature of each British possession would, as at present, be free to determine the conditions, the mode and the effect within the possession of what is known as local naturalization.

34. We now pass to the consideration of the amendments of the law which appear to us to be required in reference to (*a*) the acquisition by an alien of British nationality; (*b*) the loss by a British subject, whether natural-born or naturalized, of British nationality.

35. We do not think it is necessary to maintain the distinction made in the Act of 1870, section 8, between 're-admission' and 'naturalization.' A person who has become an alien under the provisions of the Act must before he or she is qualified for re-admission fulfil the same conditions as are required for naturalization. We see no sufficient reason for distinguishing between a statutory and any other alien, and consider that it would tend to the simplification of the law if the provisions of section 8 were repealed and not re-enacted.

36. The first condition required by the Naturalization Act, 1870, for obtaining a certificate of naturalization is that the alien should, within such limited time before making his application as may have been allowed by one of His Majesty's principal Secretaries of State either by general order or on any special occasion, have resided in the United Kingdom for a period of not less than five years or have been in the service of the Crown for a period of not less than five years. We see no reason to suggest any alteration of this provision, except so far as is necessary to meet the case of recommendation to the Secretary of State by governors of British possessions as proposed in paragraph 31.

37. The next condition required is that the alien applying for naturalization must intend when naturalized either to reside in the United Kingdom or to serve under the Crown.

We think that this condition should be altered by substituting the words 'the King's dominions' for 'United Kingdom.' We see no reason why residence in any part of His Majesty's dominions should not be sufficient to satisfy the condition.

38. These are the only statutory conditions required at present for a certificate of naturalization. A question above referred to here arises, viz., whether any and what provision should be made for the avoidance of a certificate found to have been obtained by fraudulent representations. Those representations may be false either as regards the alleged facts as to residence or as to the existence of the alleged intention to reside. Residence is a fact capable of proof. Intention to reside is not equally capable of proof, and many cases have occurred where subsequent events have shown that no such intention could in fact have been entertained. There are many cases where naturalization has been sought for the sole purpose of obtaining protection in a foreign country in which the naturalized person intended to reside. There is no power under the Act of 1870 to set aside or revoke a certificate of naturalization which has once been granted by reason of its having been obtained by false and fraudulent statements of fact as to actual residence, or as to intention to reside.

39. We think that there should be power, vested, as the case may be, in the Secretary of State or in the governor of a British possession to which such an Order in Council as has been above referred to applies, to revoke a certificate of naturalization which was proved to his satisfaction to have been obtained by false or fraudulent representation, and that the certificate should thereupon become void.

40. Except as hereafter mentioned, we think that it should be made clear that persons under disability, *i.e.*, minors, married women, idots, and lunatics, should not be capable of receiving certificates of naturalization.

41. Certificates of naturalization granted under the Act of 1870 should, we think, operate as if granted under the new Act; and the Secretary of State should be empowered to grant, if he thinks fit, a certificate under the new Act to any person holding a certificate under the Act of 1844, or who has been naturalized by a special Act.

42. The Act of 1870 contains a provision enabling the Secretary of State to grant a certificate of British nationality to 'a person with respect to whose nationality as a British subject a doubt exists.' Different views have been entertained as to the effect and scope of this provision. It has on the one hand been regarded as being introduced simply in order to meet the case of a person who might possibly be already a British subject, but who had fulfilled the conditions necessary for naturalization, by providing that the grant of a certificate of naturalization should not be evidence that he was not a British subject prior to his naturalization. The provision has, on the other hand, been regarded as having a much wider operation, and as entitling the Secretary of State, in any case in which he might consider a doubt existed whether or not a person was a British subject, to grant a special certificate of naturalization, though the conditions prescribed by the Act have not been fulfilled. We think it should be made clear that the jurisdiction of the Secretary of State extends only to the granting of a certificate in such a form as not to prejudice the question whether or not the applicant was already a British subject. The certificate should contain a statement of the existence of the doubt, but in all other respects the conditions ordinarily required for the grant of a certificate should be observed. This is in fact in accordance with established practice.

43. Having dealt with the acquisition of nationality we next proceed to deal with the ways in which nationality may be lost. In the law as it at present stands, the provisions relating to the case of a natural-born and of a naturalized British subject are to some extent different. By section 4 of the Naturalization Act, 1870, a person who is a British subject by reason of his having been born within the King's dominions, but who also became at birth (by reason of parentage or otherwise) a subject of a foreign state may, if of full age, and not under any disability, make a declaration of alienage, and shall from and after the making of such declaration cease to be a British subject. There is a similar provision with regard to a person born out of His Majesty's dominions to a father, being a British subject. This section, as it stands, is open to criticism, on the ground that it appears to assume that in every case a person born out of His Majesty's dominions to a father who is a British subject, would be himself a British subject. This, however, is not always so, as has already been pointed out.

44. The object of this section is to obviate as far as possible the complications arising from double nationality, which have been already referred to, by allowing a person who is a natural-born British subject, and also by birth a subject of a foreign state, the right of divesting himself of his British nationality. We think these provisions should be simplified and redrafted, but we do not suggest any alteration of the law. The only case in which a person who has become a British subject by naturalization is empowered to make a declaration of alienage is the peculiar case provided for by section 3 of the Act of 1870, and referred to in paragraph 26 of this report.

45. Nationality may also be lost when a British subject, whether naturalized or natural-born, becomes voluntarily naturalized in a foreign country.

The expression 'voluntarily naturalized' is not entirely free from obscurity. Does it imply some act done for the express and primary purpose of obtaining a foreign nationality, or an act which, though voluntarily, is not done for this express purpose, but for some other object to which change of nationality is attached as an incident? For instance, different views have been entertained by different legal experts whether the marriage of a British subject with a foreign woman, the legal consequence of which in her country is to invest the husband with her nationality, is voluntary naturalization within the meaning of the section. Or, again, to take an extreme case, suppose that by the law of a foreign state all persons landing on its shores at once become

its subjects, would the act of landing with or without a knowledge of the consequence be a voluntary naturalization? We think that the law should be made more definite and that British nationality should not be lost unless the person who is naturalized in the foreign country has expressly applied for naturalization or done some act from which acceptance of the foreign nationality may reasonably be inferred.

46. The mode in which nationality may be lost by persons under disability will be dealt with in a later portion of this report.

47. We come now to consider the questions which have given rise to the greatest difficulty in practice—the effect of naturalization upon the status of dependent persons.

48. First as to the wife. By section 16 of the Act of 1844 (7 and 8 Vic., c. 66), it was provided that any women married to a natural-born subject, or person naturalized, should be deemed and taken to be herself naturalized and have all the rights and privileges of a natural-born British subject. No provision was made for the case of a natural-born or naturalized British woman marrying an alien. The common law still governed her status, and she did not lose her British nationality. The Act of 1870 adopted the general principle that the nationality of the married woman should be that of her husband: 'A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.'

49. We do not propose any substantial alteration in the law. We think, however, that it should be so expressed as to purport to deal only with the question whether or not the woman becomes or ceases to be a British subject according to the law of this country, and not to attempt to define her status as regards the law of other countries. All that our law is concerned with is whether the woman is an alien or a British subject, and when and by what means she ceases to be, or becomes, the one or the other. The substantial matters are that a woman who is an alien becomes a British subject by marrying a British subject; that a woman who is a British subject ceases to be a British subject by marrying an alien; and that whenever during the continuance of a marriage the husband becomes or ceases to be a British subject, the wife at the same moment becomes or ceases to be a British subject.

50. It will be convenient, here, to consider the effect upon the status of the woman of the dissolution of marriage by death or divorce. The Act of 1870 is not clear as to the effect of dissolution of marriage in these cases. At present, if a woman is married to a British subject or to an alien and the marriage is terminated by his death, she continues to be a British subject or an alien, as the case may be, until something further occurs to alter her status. The same probably holds good when the marriage is terminated by divorce. We think, however, that the position of a divorced woman should be made clear.

51. A question arises whether in the case of a woman who has lost her British nationality by marrying an alien, and has become a widow, there should be any relaxation of the ordinary conditions which must be fulfilled before she can be readmitted to British nationality. At present a widow may obtain a certificate of readmission to British nationality in the manner prescribed by section 8 of the Act of 1870. This is in practice held to impose upon the widow the same conditions as to residence and intention to reside as are imposed upon any alien applying for a certificate of naturalization. The principal reason for any relaxation of such conditions is to be found in the facilities which might result to her infant children to become more speedily British subjects, and as to relieve them from any disqualifications on this ground from entering the public service. The latter question, however, we propose to deal with otherwise. Apart from this indirect advantage we see no reason why a woman who has lost her nationality by marrying an alien should be placed on a footing different from that of any other alien, and we therefore recommend that, as is in fact required at present, a woman in this position before again becoming a British subject should fulfil the conditions required for naturalization.

52. We have next to deal with the effect of naturalization of a parent upon the status of children born (1) before, (2) after, naturalization.

53. The present law on this subject is contained in subsections 3, 4 and 5 of section 10. of the Naturalization Act, 1870. There has been some conflict of opinion in regard to the strict interpretation of this section, but in recent practice its effect has been taken to be as follows: Any child who is born in a foreign country, whether before or after naturalization of the parent, and who during infancy becomes resident with the father or mother (being a widow) in any part of the United Kingdom, is deemed to be a naturalized British subject. Conversely, where a father or a mother (being a widow) has lost British nationality any child who during infancy and after the naturalization of the parents abroad has become resident in the country where the father or mother is naturalized, and has according to the law of that country become naturalized therein, becomes a subject of that country and thereupon ceases to be a British subject. There is also a provision for resumption of British nationality by a child whose parent has been readmitted to that status, but as we propose to dispense with the distinction between naturalization and readmission this needs no further notice.

54. It will be seen that the test at present of the acquisition of British nationality by an infant is (1) the naturalization of the parent; (2) residence with the parent in the United Kingdom. Loss of British nationality depends (1) on loss by parent; (2) on residence in the country where the parent is naturalized; (3) on the law of that country recognizing the child as also naturalized therein. It appears to us that the law as it stands is needlessly complicated, and that it leaves undefined the amount and character of residence necessary in each case to affect the nationality. We think it would be desirable to adopt a clearer and more easily applied test of the nationality of minor children.

55. Dealing first with the case of children born before the naturalization of the parent, we see no reason why, if the parent so desires and the Secretary of State approves, such children should not be naturalized at the same time with the parent and their names included in his certificate. All that seems necessary is that the parent should make a declaration of his intention that the child sought to be naturalized with him should reside with him in His Majesty's dominions. It will be in the discretion of the Secretary of State to include or not to include the minor in the certificate. The nationality of the child would if this recommendation is adopted be provable at once by the evidence of the certificate itself, and would not depend upon questions of law and fact which may be more or less uncertain and difficult to ascertain. But we think that it is right that after the child comes of age he should within a time be be limited (say one year) have the option of becoming an alien by declaration of alienage. The power given to the Secretary of State should be extended to naturalizing authorities in British dominions.

56. If our recommendation is adopted that the distinction between a natural-born and a naturalized British subject should be as far as possible abolished, it should be enacted that every child born to a naturalized father after naturalization, whether born within His Majesty's dominions or not, is a British subject. The requirement of residence with the naturalized parent which at present exists, should, we think, be abolished.

57. A case of hardship sometimes arises when a woman who is a British subject has lost her nationality by marrying an alien, and is left a widow with infant children. Her home and connections being in the United Kingdom she desires her infant sons to enter the British army, or navy, or some branch of the civil service. She cannot, however, be readmitted to British nationality without satisfying the requirement of five years' residence, and consequently the sons cannot obtain the necessary naturalization by 'becoming resident' with her. The difficulty has been hitherto met by the Secretary of State feeling himself at liberty to grant a certificate of naturalization to a minor for the purpose of enabling him to enter the public service. It is, however, doubtful whether the Act of 1870 contemplates the grant of a certificate to a minor at all. We think this power should be expressly given, and that the Secretary of State should be entitled in suitable cases, for special reasons which he may consider suffi-

cient, to grant to a minor a certificate of naturalization without fulfilment of the conditions ordinarily required.

58. With regard to the effect upon a minor child of loss of British nationality by the father, whether by declaration of alienage or otherwise, we think that the principle that the nationality of a minor child should depend upon that of the father should govern, and that the child should lose his British nationality at the same moment that his father becomes an alien. Any hardship which this rule might work in individual cases would, we think, be sufficiently obviated by the power above recommended to be given to the Secretary of State to grant certificates for sufficient reasons to minors.

59. The status of the children of a widow of a British subject who loses her nationality by marriage with a subject of a foreign state is somewhat obscure under the provisions of section 10 (3) of the Act of 1870. According to one view, if she not only becomes an alien by English law, but also becomes a subject of foreign state, and the child by her former husband becomes resident in the foreign country, and also becomes naturalized therein, such child becomes a subject of that state and loses British nationality. A doubt has, however, been expressed whether this provision applies to the case of a widow who loses her nationality by marriage with an alien. We recommend that this obscurity should be cleared up. We are not entirely agreed as to the most desirable amendment of the law. The majority of the committee think that the marriage of a widow—being a British subject—with an alien should not affect the national status of her children—if any—by her first husband, whether or not they became residents in, and subjects of, the country of the second husband. To meet the case where the children as a fact follow the mother and are invested with the nationality of the stepfather, they think that such children should be empowered on coming of age to make a declaration of alienage. The minority are of opinion that it would be more consistent with principle to provide that when a widow ceases to be a British subject by reason of her marriage with an alien, her infant children should also cease to be British subjects; but should be entitled to resume British nationality by a declaration to be made within one year after coming of age.

60. We have to acknowledge the very valuable services of our Secretary, Mr. Wheeler, especially in collecting and arranging the voluminous materials which it has been necessary for us to consider.

SUMMARY OF RECOMMENDATIONS.

1. We recommend that the existing statute law relating to the acquisition and loss of British nationality should be consolidated, and that the statutes 25 Edward III., stat. 2; 7 Anne, c. 5, s. 3; 12 and 13 William III., c. 2 (part); 4 George II., c. 21, s. 1; 13 George III., c. 21; 33 Vic., c. 14; 33 and 34 Vic., c. 102; 35 and 36 Vic., c. 39; 58 and 59 Vic., c. 43; should be repealed.

2. We recommend that the existing law as to acquisition of British nationality by parentage should be re-enacted in a simpler form, with this exception, that where the father was born out of His Majesty's dominions a child also born out of such dominions should not be a British subject. We also recommend that the law as to birth on board a British ship should be declared as stated in paragraph 12 of this report.

3. We recommend that provision should be made by legislation enabling a Secretary of State, or the governor of a British possession, to confer the status of a British subject upon persons who fulfil the requisite conditions in any part of the British dominions, and that the status so conferred should be recognized by British law everywhere, both within and without His Majesty's dominions. This provision should be without prejudice to the power of the legislature of any British possession to provide for the conferring upon any persons under such conditions as it might see fit the whole or any of the rights of British subjects within its own territory.

4. We recommend that the conditions necessary for the acquisition and loss of the status of a British subject should remain as at present, with the modifications as to residence, revocability of certificate, and otherwise, mentioned in detail in the report.

5. We recommend that the law as to the acquisition and loss of the status of a British subject by persons under disability should be simplified and modified in the manner stated in detail in the report.

We have the honour to be, sir,
Your obedient servants,

KENELM E. DIGBY.
F. H. VILLIERS.
D. FITZPATRICK.*
W. E. DAVIDSON.
H. BERTRAM COX.

W. WHEELER,
Secretary.

NOTE BY SIR DENNIS FITZPATRICK.

Section 6 of the Naturalization Act, 1870, provides that a British subject who has 'voluntarily become naturalized' in a foreign state shall cease to be a British subject.

This provision is clear enough, and right enough, in so far as it applies to cases in which a British subject applies to a foreign state for what may be called 'naturalization in solemn form,' or in which, as, *e.g.*, under the first clause of article 9 of the amended French code, he resorts to some other official procedure for the purpose of acquiring a foreign nationality.

But suppose a British subject, mainly with a view to his own comfort or happiness, or advancement, takes, in a foreign country, some action, having in itself no relation whatever to the acquisition of a national character, as, *e.g.*, if he sets up some sort of business there, or acquire some sort of property there, or marries a woman of the country, or if he merely resides there for a certain time—and suppose the law of that country chooses, thereupon, *ipso facto,* to confer or impose upon him its nationality, either absolutely, or unless he has taken some steps to ward off this result. In regard to such a case, two questions present themselves, viz.: 1st, are we to hold that that British subject has 'voluntarily become naturalized' within the meaning of section 6 of our Act? and, 2nd, if we are, ought that section to be allowed to stand as it is without some amendment? As to the former question, the answer to it, we have been advised, is in the affirmative, provided the British subject had actual notice of the foreign law—otherwise in the negative. As to the latter question, assuming, as we are bound to do, that the answer to the former question is correct, I think that the law stands in need of amendment. To say nothing of the awkwardness of making the retention or loss of a man's British national character dependent on the state of his knowledge at a certain point of time, it seems to me that, even if the British subject concerned has notice of the foreign law, it is, under the circumstances, a very harsh thing to deprive him of his British nationality.

I may observe that the peculiar provisions of the foreign laws to which I refer have been condemned, both as offending against the principle that a man should not be invested with a new national character unless he actually applies for or accepts it, and also as laying a trap for the unwary. But it is open to every state to enact such laws if it thinks fit, and if one of our subjects thoughtlessly brings himself within the operation of such a law, he must forfeit all claim to our protection so long as he remains

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* Subject to this, that I am not satisfied that what is suggested at the end of para. 45 is sufficient to get rid of the ambiguities and hardships arising from the present law. See my note of July 16, 1901, appended.

D. F. P.

within the limits of the state of which he has thus become a subject. This is the necessary consequence of his thoughtlessness, and he must accept it; but it is not a necessary consequence that he should be deprived of his British nationality. No doubt if he retains it we have the awkward result of a double nationality, but I do not think that is, under the circumstances, a sufficiently strong reason for depriving him of his British nationality. The position was discussed in an article by M. Robinet de Clery in the year 1875 with reference to provisions of the Code Civil as they then stood, and it was further discussed in 1886 in the debates on the amending law which was passed in 1889. The view taken was that the acquisition by a French subject of a foreign nationality otherwise than by naturalization in solemn form, should not entail the loss of his French nationality unless he had either applied for or accepted that foreign nationality; and in the law of 1889 it was provided (Art. 17, cl. 1) that the acquisition by him of a foreign nationality 'par l'effet de la loi' (as distinguished from its acquisition by naturalization in solemn form) should not have this effect except where he obtained the foreign nationality on his own application (sur sa demande).

I would suggest that, following pretty closely this example, there should be substituted for the present provision of section 6 a clause to the effect that a British subject should cease to be such if he, not being under any disability, acquired the nationality of a foreign state *in pursuance of an official procedure established for that purpose,* and in the coures of which he applied for or accepted that nationality.

This would provide for all ordinary cases that it seems desirable to hit, but there would remain two exceptional cases for consideration.

The first is the case of a British subject acquiring the nationality of a foreign state *ipso facto* by accepting service under the government of that state.

I think it should be provided that such a man should cease to be a British subject unless he had accepted such service with the previous consent of the British government.

The second case is the rare one of a British subject having the nationality of a foreign state conferred on him personally (say) in recognition of eminent services, by a special grant of the legislature or other authority in that state which, so far as could be seen, would seem to have been made spontaneously and without any sort of application or acceptance on his part. If it is thought necessary to provide for this case it would probably be best to enact that the person so naturalized should cease to be a British subject on the expiration of one month from the date of the naturalization unless within that time he sent to the proper authority of the foreign state a protest against the naturalization or the British government assented to the naturalization.

D. FITZPATRICK.

July 16, 1901.